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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

Plaintiff,

v.

CIVIL ACTION NO. 03-CV-103

BERKS COUNTY, PENNSYLVANIA;
BERKS COUNTY COMMISSION;
BERKS COUNTY BOARD OF
ELECTIONS; TIMOTHY REIVER,
MARK SCOTT, and JUDITH
SCHWANK, in their
official capacities
as County Commissioners and
Members of the Board of
Elections; and KURT BELLMAN,
in his official capacity as
Director of Elections,

Defendants.

COMPLAINT

The United States of America, Plaintiff herein, alleges:

1. The Attorney General files this action seeking injunctive and declaratory relief pursuant to Sections 2, 3(a), 4(e), 11(a), 12(d), and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973a(a), 42 U.S.C. 1973b(e), 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-6, and 28 U.S.C. 2201, and to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

Filed 2/25/03

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. 1345 and 42 U.S.C. 1973j(f).

3. Defendant Berks County is a county within the State of Pennsylvania and is governed by the laws of that State.

4. Defendant Berks County Commission is the governing body of Berks County with statutory powers, duties, and responsibilities to effect local governmental functions, including the capacity to make contracts for carrying into execution the laws relating to counties and for all lawful purposes, and to make appropriations for any purpose authorized by Act of the General Assembly, including the conduct of elections. Defendant Berks County Board of Elections has statutory powers, duties, and responsibilities concerning the conduct of elections in Berks County and Reading City, Pennsylvania. Its members consist of the Berks County Commissioners, Timothy Reiver, Mark Scott, and Judith Schwank. Defendants Reiver, Scott and Schwank reside in Berks County and are sued in their official capacities.

5. Defendant Kurt Bellman is the Director of Elections, with duties, powers, and responsibilities concerning the administration of elections held in Berks County. Defendant Bellman is a resident of Berks County and is sued in his official capacity.

6. According to the 2000 Census, Reading City has a total population of 81,207 persons and a voting-age population of 56,913 persons. Reading City has a total Hispanic population of 30,302, representing 37.3% of the City's total population. There are 17,278 Hispanic persons of voting age, representing 30.4% of the City's voting age population (hereafter referred to as "VAP"). The number and proportion of Hispanic persons in the City have doubled since 1990, when Hispanic persons comprised 14,486 (18.5%) of the total population and 7,988 (13.7%) of the voting age population.

7. The 2000 Census reports that of Reading City's Hispanic population, 19,054 are of Puerto Rican descent, an increase of over 60% compared to 1990 Census data, which reported that 11,705 residents of Reading City were Hispanic of Puerto Rican descent.

8. Of the 19,054 Hispanic persons of Puerto Rican descent residing in Reading City, a significant number were educated in American flag schools in which the predominant classroom language was other than English.

9. The 2000 Census reported that Reading City had a total of 10,929 Spanish-speaking residents over age five who were limited English proficient, constituting 14.7 percent of Reading City persons over age five. This represents an increase of 84% over the number of limited English proficient persons reported by the 1990 Census, which was 5,936 Spanish-speaking residents over

age five who were limited English proficient, or 8.3 percent of Reading City residents over age five.

10. Hispanic persons residing in Reading City have suffered and continue to suffer discrimination, including a history of discrimination and neglect in voting-related activities, and bear the effects of that discrimination today.

11. Defendants Berks County election officials have knowledge of the need for Spanish language assistance among Reading citizens of Puerto Rican descent.

12. Reading City has a total of 48 election districts. Of these 48, 40 contain a minimum of 10% Spanish-surname registered voters, 18 contain a minimum of 30% Spanish-surname registered voters, and 12 contain a minimum of 40% Spanish-surname registered voters.

13. In conducting elections in Reading City, Berks County Defendants have denied Hispanic citizens with limited English proficiency an equal opportunity to participate in the political process and to elect the representatives of their choice. The actions that contributed to this denial include, but are not limited to, the following:

a. Poll officials have directed hostile remarks at, and have otherwise acted in a hostile manner toward, Hispanic voters, to deter them from voting and to make them feel unwelcome at the polls; and

b. Poll officials have engaged in election practices including, but not limited to, failing to communicate effectively with Spanish-speaking voters regarding necessary information about their eligibility to vote, voter registration status, identification requirements, and polling place changes and assignments, and turning away Hispanic voters and not allowing them to cast a ballot at the 2001 and 2002 elections.

14. Moreover, Hispanic voters in Reading City, Berks County have also been deterred or prevented from voting by the following practices:

a. Defendants have failed to recruit, appoint, train, and maintain an adequate pool of Hispanic and bilingual poll officials, despite their knowledge of the needs of limited English proficient Hispanic voters. For example, defendants have maintained a pool of poll workers that contains, on average, only 3 percent with Spanish surnames, even though Hispanics comprise approximately 35 percent of registered voters in Reading. As a result, some Hispanic voters with limited English proficiency are unable to obtain effective assistance at certain polling places because most polling places are not staffed with bilingual polling officials; and

b. Defendants have failed to provide adequate notification to the Spanish-speaking population of the availability of bilingual assistance at the few sites where it

has been available; and

c. Defendants have failed to translate into Spanish election materials including the ballot, instructions for casting a ballot on election day, general election notices concerning participation in the political and electoral process, polling place changes, letters to voters regarding registration and election-day issues, voter assistance information, and information on Berks County's elections internet site, despite their knowledge of the needs of limited English proficient voters. As a result, some Hispanic voters with limited English proficiency have had difficulty voting because election materials have been provided in English only.

15. Some Hispanic voters with limited English proficiency have requested that other persons of their choice, including family members, friends, or poll watchers, assist them in casting their ballots because they were illiterate in English. Berks County Defendants would not permit these persons to assist Hispanic voters, and the voters did not receive such assistance from other persons.

16. Poll workers are trained that if questions arise at the polls on election day, they must follow the Election Procedures Guide, which provides in relevant part: "Voter may select a voter from his or her own district to assist." Poll workers are further instructed that a voter qualifies to receive assistance

only if the need is documented on the voter's registration card.

FIRST CAUSE OF ACTION

17. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 16 above.

18. Section 2 of the Voting Rights Act prohibits Defendants from imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" which results in a denial or abridgement of the right to vote on account of race or color, or membership in a language minority. 42 U.S.C. 1973(a).

19. The "totality of circumstances" of Defendants' actions, as described in ¶¶ 10-14, has resulted in Hispanic voters having "less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice." 42 U.S.C. 1973.

20. Unless enjoined by this Court, Defendants will continue to violate Section 2 of the Voting Rights Act, 42 U.S.C. 1973, by enforcing standards, practices, or procedures that deny limited English proficient Hispanic voters an opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

SECOND CAUSE OF ACTION

21. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 20 above.

22. Section 208 of the Voting Rights Act provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 42 U.S.C. 1973aa-6.

23. Defendants' actions described above in ¶¶ 15-16 constitute a failure to ensure that voters who are unable to read the ballot and who need voting assistance are permitted to have the person of their choice assist them at the polls, in violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6.

24. Unless enjoined by this Court, Defendants will continue to violate Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6, by failing to ensure that voters are permitted to receive assistance from the person of their choice.

THIRD CAUSE OF ACTION

25. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 24 above.

26. Section 4(e)(1) prohibits Defendants from "conditioning the right to vote . . . on the ability to read, write, understand, or interpret" the English language by persons educated in American Flag classrooms, including the Commonwealth

of Puerto Rico, where the predominant language is not English.
42 U.S.C. 1973b(e)(1).

27. Defendants knowingly conduct English-only elections as described in ¶¶ 10-16, and the failure to provide Reading's Puerto Rican citizens with limited English proficiency with the election information and assistance necessary for their effective political participation constitutes a violation of Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b.

28. Unless enjoined by this Court, Defendants will continue to violate Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b(e), by failing to provide election information and assistance necessary to effectively participate in the political process to Spanish-language minority citizens educated in American flag schools and currently residing in Reading City.

WHEREFORE, the Plaintiff, United States, prays for an order:

(1) With respect to Plaintiff's First Cause of Action:

(a) Declaring that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. 1973 because they have provided Hispanic and Spanish-language minority citizens with less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice;

(b) Preliminarily and permanently enjoining

Defendants, their agents and successors in office, and all persons acting in concert with them, from implementing practices and procedures which deny Hispanic and Spanish-language minority citizens an opportunity to participate effectively in the political process on an equal basis with other members of the electorate in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and

- (c) Requiring Defendants to devise and implement a remedial program that provides Reading City's Hispanic and Spanish-language minority citizens the opportunity to participate in the political process on an equal basis with other members of the electorate consistent with Section 2 of the Voting Rights Act, 42 U.S.C. 1973;

(2) With respect to Plaintiff's Second Cause of Action:

- (a) Declaring that Defendants have violated Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6 by failing to ensure that Reading City voters who are unable to read the ballot and who need voting assistance are permitted to have the person of their choice assist them at the polls;
- (b) Preliminarily and permanently enjoining Defendants, their agents and successors in office,

and all persons acting in concert with them, from not allowing Reading City voters the right to have the person of their choice assist them at the polls in violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6; and

- (c) Requiring Defendants to devise and implement voter assistance procedures and practices which will ensure that Reading City voters are permitted to have the person of their choice assist them at the polls, consistent with Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6.

(3) With respect to Plaintiff's Third Cause of Action:

- (a) Declaring that Defendants have violated Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b(e) by failing to provide election information and assistance necessary to effectively participate in the political process to Spanish-language minority citizens educated in Puerto Rico and currently residing in Reading City;
- (b) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from failing to provide election information and assistance to Spanish-language minority citizens

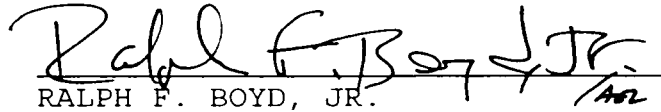
educated in Puerto Rico and currently residing in Reading City, in violation of Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b(e); and

- (c) Requiring Defendants to devise and implement a remedial plan to ensure that Spanish-language minority citizens educated in Puerto Rico and currently residing in Reading City are provided election information and assistance consistent with Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b(e).

Plaintiff further requests that this Court:

1. Authorize the Director of the Office of Personnel Management to appoint federal examiners for Berks County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), and the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution;
2. Award Plaintiff the costs and disbursements associated with the filing and maintenance of this action;
3. Award such other equitable and further relief as the Court deems just and proper.

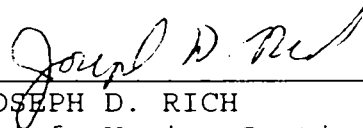
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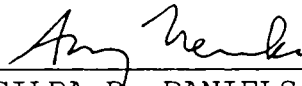
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